

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
2815 Townsgate Road, Suite 130
Westlake Village, California 91361
Telephone: (805) 270-7100
Facsimile: (805) 270-7589
mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com

ROTHSCHILD & ASSOCIATES, APC

Kristi D. Rothschild, Esq. (SBN 222727)
Julian Alwill, Esq. (SBN 259416)
27 W. Anapamu Street, Suite 289
Santa Barbara, California 93101
Telephone: (805) 845-1190
Facsimile: (805) 456-0132
krothschild@kdrilawgroup.com
jalwill@kdrilawgroup.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANDREA RIDGELL, on behalf of
herself and others similarly situated
Plaintiff,

v.

FRONTIER AIRLINES, INC. a
Colorado corporation; AIRBUS S.A.S.,
a foreign corporation doing business in
the State of California; AIRBUS
GROUP HQ INC., a corporation doing
business in the State of California
Defendants.

CASE NO. CV 18-4916 PA (AFMx)

**PLAINTIFF'S RESPONSE TO
ORDER TO SHOW CAUSE RE:
DISMISSAL FOR LACK OF
PROSECUTION**

1 Plaintiff Andrea Ridgell ("Plaintiff") hereby submits the following response to
 2 the Court's February 25, 2019 Minute Order [ECF Dkt. No. 47] ordering Plaintiff to
 3 show cause why Defendant Airbus S.A.S. ("Airbus") should not be dismissed for lack
 4 of prosecution pursuant to Federal Rule of Civil Procedure 4(m).

5 Despite Plaintiff's diligent efforts, the Ministry de la Justice in Paris has not yet
 6 confirmed service upon Airbus. As noted in her response to the prior OSC, Plaintiff
 7 has retained ABC Legal to effectuate service under the Hague¹. In the extpence of ABC
 8 Lega, such service typically takes between six and twelve months. (Hamilton Decl. at
 9 ¶8.) Pursuant to Article 15 of the Hague Convention, Plaintiff could precede to take the
 10 default of Airbus², however, Plaintiff believes it would be more equitable for this Court
 11 to grant her permission to serve in accordance with Federal Rule of Civil Procedure
 12 Rule 4(f)(3). Specifically, Plaintiff proposed service via international courier, Federal
 13 Express. Service under Rule 4(f)(3) "must be (1) directed by the court; and (2) not
 14 prohibited by international agreement." *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d
 15 1007, 1014 (9th Cir. 2002).

16 Under Rule 4(f)(3), "courts have authorized a wide variety of methods of service
 17 including publication, ordinary mail, mail to the defendant's last known address,
 18 delivery to the defendant's attorney, telex, and most recently, email." *Rio Props.*, 284

19 ¹ Plaintiff provided a detailed accounting of her efforts at service in response to the
 20 Court's prior OSC. [ECF Dkt. No. 46.] To avoid duplication, Plaintiff has not repeated
 21 such efforts herein, however, Plaintiff has attached a declaration from ABC Legal
 22 regarding such efforts. Declaration of Rick Hamilton ("Hamilton Decl.") at ¶¶ 5-6.

23 ² Under Article 15 of the Convention, a United States Court may, notwithstanding the
 24 absence of proof of service, grant default judgment upon satisfaction of three
 25 conditions: (a) the document was transmitted by one of the methods provided for in this
 26 Convention, (b) a period of time of not less than six months, considered adequate by
 27 the judge in the particular case, has elapsed since the date of the transmission of the
 28 documents, [and] (c) no certificate of any kind has been received, even though every
 reasonable effort has been made to obtain it through the competent authorities of the
 State addressed. Hague Convention on the Service Abroad of Judicial and Extrajudicial
 Documents in Civil or Commercial Matters ("Hague Service Convention"), 20 U.S.T.
 361, T.I.A.S. No. 6638 (Feb. 10, 1969), Art. 15 ¶ 2. The United States formally adopted
 the provisions of this paragraph in Declaration No. 3. Designations and Declarations
 Made on the Part of the United States in Connection with the Deposit of the United
 States Ratification, Declaration No. 3; see also *CGI Techs. & Sols. Inc. v. Acacio*, No.
 SACV171943JVS KESX, 2019 WL 978097, at *3 (C.D. Cal. Jan. 4, 2019).

1 F.3d at 1016. Notably, in *Rio Properties*, the Ninth Circuit held that the district court
2 properly found that alternative service via international courier and via email was
3 constitutionally acceptable. *Id.* at 1016–17. The Ninth Circuit confirmed that the
4 “Constitution does not require any particular means of service of process, only that the
5 method selected be reasonably calculated to provide notice and an opportunity to
6 respond.” *Id.* at 1017; see also *Chanel, Inc. v. Lin*, 2009 WL 1034627, at *2 (S.D. Fla.
7 April 16, 2009) (noting that a method of service under Rule 4(f)(3) should be calculated
8 “to apprise interested parties of the pendency of the action and afford them an
9 opportunity to present their objections”).

10 Plaintiff requests that the Court permit her to serve Airbus via international
11 courier, Federal Express, to Airbus’ headquarters in Toulouse, France as well as its two
12 engineering centers in North America – Wichita, Kansas, and Mobile, Alabama.
13 Federal courts have commonly authorized service of process via FedEx or another
14 international courier pursuant Rule 4(f)(3) on defendants located outside the United
15 States. See *Ehrenfeld v. Salim a Bin Mahfouz*, 2005 WL 696769, at *3 (S.D.N.Y. March
16 23, 2005) (approving service by certified mail or FedEx); *Mainstream Media, EC v.*
17 *Riven*, 2009 WL 2157641, at *3 (N.D. Cal. July 17, 2009) (noting that, previously, the
18 “court granted [the plaintiff’s] motion for alternative service on [the defendant]
19 pursuant to Federal Rule of Civil Procedure 4(f)(3), directing that the prior delivery of
20 service documents by [the plaintiff] to [the defendant] via [*inter alia*]. . . FedEx was
21 effective service of process.”); *Bank of Credit and Commerce Int’l (Overseas) Ltd. v.*
22 *Tamraz*, 2006 WL 1643202, at *6 (S.D.N.Y. June 13, 2006) (ordering that “[p]ursuant
23 to Federal Rule of Civil Procedure 4(f)(3), plaintiff shall serve [the defendant] by
24 Federal Express addressed to him at [his address in Paris, France] with plaintiff to
25 furnish evidence regarding the signature of the person who accepted the package.”).

26 Based upon the above, Plaintiff respectfully requests that the Court discharge the
27 OSC and issue an order permitting Plaintiff to service Airbus pursuant to
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1 Fed.R.Civ.P.4(f)(3) via international courier, Federal Express.
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4 DATED: March 24, 2019

BRADLEY/GROMBACHER, LLP

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6 By: /s/ Kiley Lynn Grombacher
7 Marcus J. Bradley, Esq.
8 Kiley Lynn Grombacher, Esq.
9 Attorneys for Plaintiff
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